

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ARMAND JONES

PETITIONER

V.

NO. 4:23-CV-55-DMB-JMV

**BURL CAIN, Commissioner
of the Mississippi Department of
Corrections; and LYNN FITCH,
Attorney General of the State of
Mississippi**

RESPONDENTS

ORDER

On June 13, 2023, United States Magistrate Judge Jane M. Virden issued a Report and Recommendation (“R&R”) recommending that (1) the respondents’ motion to dismiss¹ be granted as to Ground 2 of Armand Jones’ habeas petition as unexhausted; (2) “effective with the entry of an order by the District Judge, [Jones] submit an amended petition to reflect only the exhausted Ground 1 claim;” and (3) “Respondents be given 75 days from the date of the District Judge’s Order to file a responsive pleading to Ground 1.” Doc. #10 at PageID 2277–78. No objections to the R&R were filed.

“With respect to those portions of the report and recommendation to which no objections were raised, the Court need only satisfy itself that there is no plain error on the face of the record.” *Gauthier v. Union Pac. R.R. Co.*, 644 F. Supp. 824, 828 (E.D. Tex. 2009) (citing *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc)).² The Court has reviewed the R&R and finds no plain error on the face of the record. Accordingly:

¹ Doc. #4.

² Douglass was superseded by statute on other grounds due to updates to the Federal Rules of Civil Procedure. With respect to the applicable standard of review when no objections are filed, the Fifth Circuit subsequently acknowledged the same standard. *See, e.g., K.S. v. Nw. Indep. Sch. Dist.*, 689 Fed. App’x 780, 783 (5th Cir. 2017).

1. The R&R [10] is **ADOPTED** as the order of the Court.
2. The motion to dismiss [4] is **GRANTED** as to the Ground 2 claim. The Ground 2 claim is **DISMISSED without prejudice**.
3. Within fourteen (14) days of the entry of this order, Jones may file an amended petition containing only his exhausted Ground 1 claim. If such amended petition is filed, the respondents will have seventy-five (75) days from the date of its filing to file a responsive pleading.

SO ORDERED, this 16th day of August, 2023.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE